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D.B. CIVIL SPECIAL APPEAL NO.77/2007.
[VINOD KUMAR UPADHYAY VS. STATE & ORS.]

DATED : 09.02.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.C.P.Trivedi for appellant.

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This appeal is directed against the order passed by the learned Single Judge dated 08.01.2007 dismissing the third stay application.

The facts of the case as emerge from the material placed before us are that the petitioner while he was posted at Mahila Bagh School was transferred to Punia ki Piyau on 11.09.2004. He was relieved from Mahila Bagh School and on 01.01.2005 he joined at Punia ki Piyau. With these transactions so far as transfer of the petitioner vide order dated 21.09.2004 was concerned ran it full course and nothing was required to be done.

The writ petition itself was filed on 27.01.2005 after the order had been implemented on 28.01.2005 following interim order has passed by the learned Single Judge:-

> "Meanwhile, if the petitioner has not been relieved, he shall not be relieved, till next date."

It is now urged by the learned counsel for the petitioner that he was thereafter sent to Mahila Bagh on deputation. While he was on deputation he filed a contempt petition alleging that there has been volition of the interim order passed by the court on 28.01.2005.

Apparently, in the light of facts stated above petitioner's position was not improved and he was to continue at his new place of posting at Punio ki Piyau. The petitioner had not disclosed the fact of his relieving from Mahila Bagh and joining at Punia Ki Piyau by 01.01.2005.

The petitioner moved second stay application on 04.04.2005 alleging that despite order dated 28.01.2005 the petitioner has been given relieving order dated 11.03.2005 which need be stayed. In this application also the petitioner did not disclose that he had already been relieved from Mahila Bagh on 01.01.2005 and joined at Punia ki Piyau. He was not at Mahila Bagh on 28.01.2005. Hence the order dated 28.01.2005 did not attend his posting thereafter. However, he did not disclose how did not come back to Mahila Bagh after

28.01.2005. Apparently, the order dated 11.03.2005 related to position previously in respect of petitioner's posting at Mahila Bagh which took place after 28.01.2005 and was not subject of writ petition. In the absence of these informations an interim order was passed by learned Single Judge on 08.04.2005 on second stay application staying effect and operation of order dated 11.03.2005 until next date.

As we have noticed above before 28.01.2005 the petitioner had already been relieved from Mahila Bagh and joined at Punia ki Piyu which fact was perhaps not disclosed by the petitioner at the time when he asked for interim relief on 28.01.2005.

Be that as it may the contempt petition was dismissed when these aforesaid facts were brought to notice of the court. The petitioner has then moved a third stay application seeking stay of the orders dated 06.12.2006 and 05.12.2006 relieving him from Mahila Bagh and joining at Punia ki Piyau.

When the petitioner's counsel was asked, it was revealed by the learned counsel for the petitioner that he was continuing at Mahila Bagh not in pursuance of the directions of the Court but as a result of he having been sent on deputation

at Mahila Bagh perhaps because of the order dated 28.01.2005. The transaction relating to deputation is not subject matter of the writ petition at all. If the petitioner was sent to Mahila Bagh on deputation and he is being sent back to the original place of posting, he cannot raise any grievance in respect of the said order in this writ petition which is not related to the deputation.

The second order which the petitioner alleges to have been made in his favour about not relieving from Mahila Bagh can only be as a sequel to order dated 28.01.2005 but cannot relate to the deputation which is not subject matter of the writ petition. If the petitioner has secured the order by concealing the fact about his joining at Puniya ki piyau on 01.01.2005 and not holding the post as on 28.01.2005 he cannot be permitted to take advantage of order dated 08.04.2005 which, as noticed by us was secured by concealing vital facts. The order dated 08.04.2005 therefore is vacated.

In view of the aforesaid, we are of the opinion that so far as relief claimed in writ petition had become infructuous when the same was filed. No interim relief could have been granted to the petitioner.

In the circumstances, the appeal as well as writ petition stand dismissed.

[CHATRA RAM JAT], J. **[RAJESH BALIA], J.**

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